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ACCOUNT SETTLED.

Where an "account settled" is relied on, by way of plea or answer to a bill for an account, it is conclusive, unless the plaintiff can allege and prove some fraud or mistake; and the allegation of such fraud or mistake must state the particular facts of the fraud or mistake. *Costin v. Baxter*, 297.

ADMINISTRATORS AND EXECUTORS.

1. An administrator has a right to sell notes of hand, as well as chattels, belonging to his intestate's estate, and the sale is no breach of duty and the purchaser, even at a discount, shall not be held liable to creditors or others, unless he is privy to a misapplication of the price, as where he receives it in payment of a debt due to him by the administrator individually, or has otherwise actual notice that the administrator intends to commit a fraud. *Gray v. Armistead*, 74.

2. An administrator has a right to sell the notes of his intestate, and the mere fact of selling is no breach of trust. *Bradshaw v. Simpson*, 243.

3. But if a purchaser takes notes from an administrator, belonging to his intestate's estate, in satisfaction of the administrator's individual debt, or if otherwise he has actual notice of a dishonest intention and purpose on the part of the administrator to misapply the funds, the purchaser is liable to the person entitled in equity to the notes. *Ibid.*

4. Where legatees under a will bring a suit in equity against the executor for their respective legacies, and, upon an account taken, in which the executor is charged with all he had received or ought to have received, a decree is rendered against the executor in favor of each legatee for the share due him; a legatee who had given his bond to the executor for purchases made by him at the sale of the testator's effects can have no relief against a suit upon the bond, subsequently brought. He should have had it deducted from the amount ascertained to be due to him in the original decree. *Love v. Love*, 325.

5. When one of the next of kin of an intestate is entitled to a distributive share of an estate and is indebted to the administrator as administrator, the latter may require the former to take such debt in payment *pro tanto* of the distributive share. And if the distributee assigns such share, the assignee is subject to the same equities as the distributee. *Allen v. Smitherman*, 341.

6. If the debt so due to the administrator is a bond secured by a surety, the surety has a right in equity to compel the administrator to apply such distributive share towards the satisfaction of the said bond. *Ibid.*

7. A legatee cannot pay off the debts of the testator and then file a bill against the executor for payment. *Alston v. Batchelor*, 368.

8. A., being an executrix and a legatee for life, joined with B., a contingent legatee in remainder, in the conveyance of a share to C., the

ADMINISTRATORS AND EXECUTORS— *Continued.*

conveyance not purporting to be made by her as executrix. *Held*, that this conveyance only passed the respective interest of the legatees and not the absolute title to the slave, as if made by A. in her character as executrix. *Hailes v. Ingram*, 477.

9. Where an administrator bid off a slave of his intestate at his own sale, and the next of kin were present and did not object, some of them bidding against him, and he afterwards settled his accounts with the next of kin, charging himself with the price of this negro: *Held*, that the sale was sanctioned by them and the administrator was bound only for the price at which he bid off the slave. *Tate v. Dalton*, 562.

AGENT AND PRINCIPAL.

1. Where a person authorized another to buy and sell negroes for him, this was a general authority, and the agent had a right to buy for cash or on credit, at his discretion. *Ruffin v. Mebane*, 507.

2. Where such agent bought a negro, with a view of carrying out his agency, and gave a note, under seal, in the name of his principal, and the principal repudiated the note, because under seal: *Held*, that the vendor was remitted to his original right against the principal for the price of the negro. *Ibid.*

ASSIGNOR AND ASSIGNEE.

Where a bond which is secured by a deed of trust is assigned, the assignee shall have the benefit of such security. *Miller v. Hoyle*, 209.

BILL AND ANSWER.

1. When a bill does not charge the facts to be within the knowledge of the defendant, he is permitted to answer as to his information and belief, and such an answer is always deemed sufficiently responsive to the bill. *Jones v. Hawkins*, 110.

2. A bill founded upon an allegation of fraud must not merely insinuate the fraud, but must charge it in positive and direct terms; otherwise the plaintiff will not be permitted to prove it, and, of course, can have no relief. *Witherspoon v. Carmichael*, 143.

See Account Settled.

BILLS AND BONDS.

An indorsement, alone, of a bill or note, even though it be in full, is not sufficient to pass the interest in it. There must be a delivery, either to the indorsee himself or to some one for him. *Nelson v. Nelson*, 409.

CONTRACTS.

When one purchases a tract of land with full knowledge that he is buying a defective title, and takes a covenant of general warranty from the vendor and also a written declaration from some of those who are the legal owners of the land, that they assent to the sale, he has no right to have the contract rescinded or to prevent the vendor from collecting the purchase money. *Mills v. Abrams*, 456.

CREDITORS AND DEBTORS.

1. The creditor of a nonresident debtor, who is brought in by publication, cannot have a decree for the satisfaction of his claim out of debts due by persons in this State to such nonresident debtor *Logan v. Simmons*, 180.

2. Where the personal estate of a deceased debtor has been exhausted and his lands have been sold, creditors whose debts remain unsatisfied have a right in equity to have satisfaction decreed out of the rents and profits derived from the lands by the heirs—at least so much as remain in their hands unexpended. *Washington v. Sasser*, 336.

3. A creditor of an intestate has no right to be substituted in the place of the heirs, in regard to a debt due to them as heirs, unless he shows collusion between the debtor and the heirs. *Turner v. Faucett*, 549.

DEEDS.

1. An unregistered deed does not confer merely an equity. It is a legal conveyance, and, although it cannot be given in evidence until it is registered, and, therefore, it is not a perfect, legal title, yet it has, as a deed, an operation from its delivery, and so cannot be redelivered. *Walker v. Coltrainé*, 79.

2. Such a deed will be set up in equity, whether voluntary or for value. *Ibid.*

3. Where a deed has been executed and delivered, and the donor, without the consent of the donee, obtains possession of it before it is registered, and suppresses it, the donee is entitled to call upon the donor for a conveyance of the legal estate. *Tyson v. Harrington*, 329.

DEVISES AND BEQUESTS.

1. A testator, by his last will, directed as follows: "I direct that my nephew L., be educated at my expense at the Episcopal School at Raleigh; I mean that all the expenses of the school be paid by my executors. The other expenses not belonging to his education to be paid by his father. In case, for any reason, he cannot be educated at that school, I direct my executors to pay for his education at any school in this State, and at the University; the school to be designated by his father and mother." *Held*, that the testator's estate was not chargeable with the clothes of L. while he lived with his father before he was sent to the school; but that it was chargeable with his board and and clothing when sent to school, and that the words, "other expenses, not belonging to his education," referred to the expenses of nurture while he was too young to be sent from home and was boarded and clothed by his father at home, to the pocket money which boys are usually allowed while at school and at the University, and to the expenses during the vacation. *Lindsay v. Hogg*, 3.

2. A testator living and making his will in the county of Chowan directed by his last will and testament, "that A. B. should receive a plain practical education." A. B. then resided with the testator, his uncle, in the county of Chowan. After the death of the testator, the mother of A. B. removed him to Baltimore: *Held*, that the executors of the testator were bound to pay such a sum as would furnish him with a plain, practical education, according to Chowan prices, includ-

DEVISES AND BEQUESTS—*Continued.*

ing board, clothing, tuition, school books, medical charges, etc., and that by the terms, "a plain, practical education," is to be understood a good English education, without reference to the languages or the learning taught at the universities. *Cofield v. Warren*, 23.

3. A. devised and bequeathed as follows: "It is my will and desire that my executors hereafter named dispose of such of my property, at public or private sale, real or personal, for the purpose of raising money sufficient to pay my debts." *Held*, that by this clause the land is made a *primary* fund, at the discretion of the executors, for the payment of debts; that the price of the land became personalty as soon as it was sold, and, being a primary fund for the payment of debts, the personal estate is not liable to make good to the real estate the amount that has been so applied, and, if any part of the price of the land is undisposed of, that is now a part of the personal estate. *Powell v. Powell*, 50.

4. The testator then directs that his property remaining after payment of his debts shall be kept together for the maintenance of his wife and unmarried children, and also for the education of his unmarried children. The widow made advances out of her own funds for the maintenance and education of her younger children: *Held*, that she was entitled to be reimbursed out of the general fund. *Ibid.*

5. The testator also directs the balance of the property, as above mentioned, to be divided as follows, to wit, one share to each of his children (except two sufficiently provided for in his lifetime) as they should come of age or marry. Rosa, one of the children, died under age and unmarried. *Held*, that this share must remain with the common fund until such time as she would, if living, have arrived at full age, when it may be called for by her personal representatives, and held subject to the rights of her distributees. *Ibid.*

6. A testatrix, by her last will, devised as follows; "Item 2. I will and bequeath to my nephew H. K. my negroes M. and N., and also to him my Glass plantation, the proceeds of which are to go to the support of M. and N. during their lives, and at their death, it is to become said H. K.'s for his trouble in taking care of said negroes. *Held*, that the devise was of a present interest in H. K. in the Glass plantation, and that the provision that the proceeds of the land should be applied to the maintenance of these old negroes was only a discharge of the duty which the law would have imposed on her estate. *Kirkpatrick v. Rogers*, 130.

7. She also, in clause 6, devised as follows: "I will that my negroes, not otherwise mentioned in this will, be valued by three disinterested men at one-fifth less than would be considered the rating price of such negroes, and the negroes have the liberty of choosing their masters; and if the persons chosen should not be willing to take them at the valuation, that the negroes have the liberty of choosing until they get one; and Lucy's family is not to be separated, nor the negroes to be taken out of the county. The fund of this valuation is to remain in the hands of my executors, and by them kept on interest, to be annually divided between the negroes so valued, for their own use. As each one of these negroes so valued arrives at the age of 45 they are to receive from my executors what would be their equal share of the

DEVISES AND BEQUESTS—*Continued.*

principal; if any of the negroes die, their share is to be given to those living, etc. *Held*, that the direction in the first part of this clause is void for uncertainty. *Ibid.*

8. She also, in clause 8, devised as follows: "I will that all the balance of my property not herein disposed of be sold by my executors and, after my debts are paid, the proceeds of the sale be divided into three divisions; one-third to go to the use of the Associated Reformed Church at Sardis, in Mecklenburg County, North Carolina; one-third to be equally divided between my brothers' and sisters' children; the remaining third of the proceeds of the sale to be held by my negroes A. J. and L., to be subject to the same regulations as I have laid down in a former clause relative to the proceeds of the valuation of the said negroes, and to be used in the same way." *Held*, (1) that the legacy to the Associated Reform Church at Sardis was good, that congregation having appointed trustees according to law. *Held*, (2) that the property attempted to be given to the slaves under this and clause 6 pass under the residuary clause, and the slaves themselves mentioned in this and clause 6 go to the next of kin. *Ibid.*

9. *Held*, (3) that the legitimate children of the brothers and sisters of the testatrix take under this clause *per capita*, but one of them, being illegitimate, takes nothing—*children* being in law considered, *prima facie*, to mean *legitimate children*, unless it plainly appear from the will that illegitimate children were intended to be included in a bequest. *Ibid.*

10. A. bequeathed a slave to his wife for her life, and after her death to be emancipated. *Held*, that though the provision for the emancipation of the slave was void, yet the slave did not belong absolutely to the wife, but, after her death, went to the next of kin, or passed by the residuary clause, if there was one. *Creswell v. Emberson*, 151.

11. A testator devised as follows, after providing for the payment of his debts: "I will and bequeath the residue of my estate of every description to my dearly beloved wife, to manage the same as she may think most advisable, for her own support and for the support and education of our children, as long as she remains a widow, and should she again intermarry, it is my will that my property should be divided between her and her children, agreeable to the laws of North Carolina. (3) And should she not intermarry until my children become of lawful age, I hereby invest her with full and ample authority to divide my property among them as she may deem most expedient." *Phifer v. Phifer*, 155.

12. *Held*, that the widow, remaining unmarried until her death, had no right to dispose of this property at her discretion, by will, but that, in such an event, she had a life estate, and the property, after her death, was to be divided among the children of the testator as it would be divided if he had died intestate. *Ibid.*

13. A testator bequeathed certain slaves to his wife for life, with power at her death to dispose of them as she might think proper among her children. One of the children died in the lifetime of the testator, leaving children. *Held*, that the wife had no right, under this power, to appoint any of the slaves to the said last mentioned children. *Rankin v. Hoyle*, 161.

DEVISES AND BEQUESTS—*Continued.*

14. A testator devised the whole of his negroes to be divided as follows: one-seventh to C., one-seventh to B., one-seventh to S., one-seventh to E., one-seventh to R., one-seventh to M., and one-seventh to G. R., one of the legatees, who was a niece of the testator, died in his lifetime. By clause 9 of the will the testator devised as follows: "my land and stock of all kinds, etc., to be sold at public sale, all my just debts to be paid out of the proceeds of the sale." He then gives out of the proceeds of the sale $50 to A., B., and C. each. The will then proceeds: "If any left afterwards from the proceeds of the sale, to be equally divided among all my devisees." *McCorkle v. Sherill*, 173.

15. *Held*, first, that the share of the negroes bequeathed to R. lapsed by her death in the lifetime of the testator, and did not go to her children whom she left surviving her. *Ibid.*

16. *Held*, secondly, that the word "devisees" in the residuary clause meant legatees. *Ibid.*

17. *Held*, thirdly, that the legatees, as such, take no part of the lapsed legacy, but as to it and the other property not mentioned in the will the testator died intestate. *Ibid.*

18. *Held*, fourthly, that the undisposed personal property of the testator, as well the lapsed legacy as the money on hand, notes, accounts, etc., constitute the primary fund for paying the debts, and what money may remain after such purpose is answered is to be distributed among the next of kin of the testator. *Ibid.*

19. *Held*, fifthly, that the portion of the lapsed legacy which arose from the sale of the land does not go to the next of kin, but to the heirs at law. *Ibid.*

20. A testator, after making other devises and bequests, directs as follows: "It is my will that land and negroes, and *all the residue of my property, both real and personal*, not heretofore expressly willed, be put to sale at such credit as my executors may think proper; *out of the proceeds of which sale* it is my will that all my just debts be paid, and the *balance* or residue of said money arising from such sale, after paying my just debts as aforesaid, I allow and it is my will shall be equally divided among A., B., C.," etc. *Held*, that bonds and notes due to the testator were not included in this clause, as not being the ordinary subjects of sale, and there being no general residuary clause, the amount of them went to the next of kin, as undisposed of. *Alexander v. Alexander*, 229.

21. A court of equity has no right to fill up a blank in a will, or to restore a bequest which it is alleged was originally in the will, but was fraudulently obliterated by the executor or some other person before the probate. The court of equity must take the will as it is certified from the court of probate. *Trexler v. Miller*, 248.

22. A testator devised the land on which he lived and another tract to his wife in fee, and one-sixth part of his unwilled negroes, the whole to be equally divided between her and five of his six children; and "also two beds, bureau (etc.), the wagon and gear, and the" [here there was a blank] "ten head of hogs" (etc.), "which shall belong to her as her own property." He then devises property to his two sons, to his two

DEVISES AND BEQUESTS—*Continued.*

grandsons, and to two daughters. He then devises, by distinct clauses, several tracts of land, and all other property not willed "to be sold, and the money to be divided as hereinafter directed." And afterwards comes the following disposition: "It is my further will that after all my just debts be paid, and the money willed, the balance to be divided among all heirs." By a codicil he subsequently provides that "If my wife should be pregnant and delivered of a child, that child shall have a negro named Creecy, and further shall be heir with my children in the division and distribution of my estate." *Held*, that the widow was not entitled to any part of the proceeds of the property directed to be sold, but that the testator intended by the word "heirs" only his children and grandchildren. *Ibid.*

23. A bequest to legatees of all the debts they owed the testator does not include a boud due and payable to the testator as guardian to an infant, notwithstanding, upon a final settlement of the guardian accounts, the infant was found indebted to the guardian in a larger amount than the bond in question. *Graves v. Williamson*, 318.

24. A bequest of "corn, fodder, meat, and other *provisions* on hand" includes wine and brandy which the testator had laid in and provided for his own use. *Mooney v. Evans*, 363.

25. A testator gave two slaves to his wife for life, and after her death to B. R. One of the slaves died and the other became paralytic, so as to be a source of constant expense, and the legatee in remainder refused to accept the legacy. *Held*, that the expense of this slave must be defrayed out of the residue of the estate not disposed of. *Ibid.*

26. A testator devised as follows: He gives to his executors certain lands, a number of slaves, bank stock, etc., "in trust to receive the rents, issues, dividends, and profits until J. M. arrives at the age of 35 years, and to apply the same to the comfortable support and maintenance of the said J. M. and family, and upon his arrival at the age of 35 years, if his habits are good and regular and he is attentive to business, then in *further trust* to convey the same to him absolutely. But in case his habits are bad, and he should be inattentive to business then in trust to settle such property so as to give the use and profits of the same to the said J. M. for life, with remainder over to such child or children as he may leave living at his death. But if he leaves no child, then remainder over to the children of Margaret Casey," etc. J. M. died before he arrived at the age of 35. *Held*, that under this devise J. M. took only a life estate, subject to be enlarged to an absolute estate on the contingency mentioned, and that on his death before the time for the happening of the contingency the remainder took effect and the absolute estate vested in his children. *Ibid.*

27. Where a testatrix left certain slaves to A. B., without expressing any trust on the face of the will, but there was a secret understanding that the slaves should be sent out of the State for the purpose of being freed, upon the conditions prescribed by law: *Held*, by a majority of the Court that A. B. should be compelled to execute this trust within a reasonable time by procuring an order of the Superior Court, entering into bond as required by law, and removing the slaves to some country where they would be free. *Thompson v. Newlin*, 380.

DEVISES AND BEQUESTS—*Continued.*

28. *Held*, by PEARSON, J., *dissentiente*, that the trust being secret, it must be inferred that the testatrix intended that the slaves should be sent out of the State to be free, without complying with the provisions of the law, but evading them, and that the bequest was therefore void, and the next of kin were entitled. *Ibid.*

29. A testator, after making provision for the payment of his debts, supposing they were much larger than they were found to be, and after devising and bequeathing lands and personal property to his widow and three sons and a grandson, giving the largest portion to his two youngest sons, devised and bequeathed to these two sons, B. F. and J. J., all the residue of the real estate, including the land and plantation lent to his wife, to them or the survivor of them, their or his heirs. He then gives to his wife and his said two sons all the rest of his negroes. He then directs as follows: "It is my will and desire that, if the fund set apart for the payment of my debts—that is, the debts due to me, and the sales of all the perishable estate—shall not be sufficient, then my executors shall sell such of my slaves as shall be necessary; and all of the devisees shall contribute in proportion to what they may receive under this will; and for the purpose of educating and maintaining my said two sons, provided my estate shall prove to be indebted to a greater amount than may be supposed, it is my will and desire that my executors sell personal property to educate my said sons, either before or after a division; and the divisees under this will to contribute in like manner." There was no direct, general residuary clause of the personalty. *Lockhart v. Bell*, 398.

30. *Held*, that the expense of educating the two young sons was, in the first instance a charge upon the residue of the estate, and if anything remain of such residue after the payment of the debts and such expense, it must be divided among the widow and next of kin of the testator as in case of intestacy. *Ibid.*

31. Where slaves are bequeathed specifically to different persons, and the executor, being compelled by circumstances to keep possession of them for some time after the death of the testator, either receives profits or incurs expenses, such profits or expenses must be attached to and go with the slaves from which they respectively arise. *Nelson v. Nelson*, 409.

32. A testator in one clause of his will says: "I give to my daughter E. a negro woman, Leah, and her baby Anderson, her youngest child living." In another clause he says: "If there should be any increase from my negro woman Leah, I want that equally divided between my three daughters, J., E., and A., some to buy and pay the others, as I would not wish any sold out of the family." *Held*, that the increase here spoken of meant the increase born during the life of the testator. *Ibid.*

33. A testator bequeathed as follows: "First, I give to my sons T. and J. and to E. F.'s children all the balance of the negroes, to be equally divided between them, with what they have had heretofore, to have and to hold during their natural lives. The reason I give this property to the children of E. F., my daughter, is that I am fearful S. F. would spend it. My desire is that the property which shall fall to E. F.'s

DEVISES AND BEQUESTS—*Continued.*

children shall remain in the hands of my executors, and it is my wish for them to be hired out until they shall arrive at the age of 21. Secondly, if there should be any surplus after payment of debts, expenses, and legacies, such surplus shall be equally divided and paid over to my said wife and three sons" (the testator had a third son for whom he had made a previous provision), "and E. F.'s children to have their mother's part of the surplus, their executors and assigns, absolutely forever." The testator in his lifetime and before he made his will gave some slaves and other chattels to his three sons and his daughter E. F. John died before the testator, leaving four children. *Henderson v. Womack*, 437.

34. Held, first, that the children of E. F. take as a class,, and not *per capita;* that although the general rule is that the words "equally to be divided" import a division *per capita*, that rule does not apply in this case, the context evidently showing that the class was to take as a unite, the representatives of their mother. *Ibid.*

35. *Held*, secondly, that the issue of John, who died in the testator's lifetime, living at the death of the testator, could not take a life estate in the slaves bequeathed to him specifically, and that these must go into the residue; but that the issue of John living at the death of the testator were entitled to his portion of the residue bequeathed to him, under the act of 1816, and the term "issue" includes all the descendants of John living at the time of the testator's death, and they are, under the act, equally entitled to distribution with their immediate ancestors. *Ibid.*

36. *Held*, thirdly, that only the children of E. F. who were *in esse* at the death of the testator can take, the general rule being that when the division is not postponed in the will, but the shares of each are ascertainable at the death of the testator, only those can take under a gift to children of a particular person who were in being when the will took effect. *Ibid.*

37. *Held*, fourthly, that there may be an immediate division of the slaves bequeathed to legatees for life, and also an immediate division of the residue bequeatehed among all those entitled. *Ibid.*

38. *Held*, fifthly, that the reversion to which the representatives of the testator will be entitled, after the expiration of the life estates in the slaves, the same having been undisposed of by the will, cannot be immediately divided, but at the expiration of each legacy for life the slaves so devised for life will constitute a part of the general residuum, and may then be divided. *Ibid.*

39. *Held*, sixthly, that the provision in the will as to advancements applies only to slaves advanced, and these are to be brought in by the several donees in determining their respective shares; and that in estimating these advancements the value of the slaves out and out must be set upon them, it being presumed that the advancement was of the absolute interest in the slaves, and not of a life estate. *Ibid.*

40. A testator devised as follows: "I leave with my daughter-in-law, Jane Smith, my negro boy Ambrose, to work for her and Ebenezer's four children's support until the youngest one arrives at the age of 17, then to be sold and the money equally divided among them all, share and

DEVISES AND BEQUESTS—*Continued.*

share alike." Jane was then the widow of Ebenezer, a son of the testator; Ann, one of the four children, died in the lifetime of the testator. *Smith v. Wiseman*, 540.

41. *Held*, that the share of Ann lapsed, and became a part of the undisposed fund. *Ibid.*

42. *Held*, secondly, that the widow was entitled, equally with the children to a share of the money which the negro was sold for. *Ibid.*

43. Susan, the youngest of the children, died after the testator, but before she arrived at the age of 17. *Held*, that hers was a vested legacy, and went to the administrator. *Ibid.*

44. *Held*, secondly, that the sale of the negro should take place when the next youngest of the children who survived should arrive at the age of 17. *Ibid.*

45. In another clause the testator devised as follows: "I give to Alexander two tracts of land, one called, etc. I enjoin it on him to pay to each of Ebernezer's four children $50 to each child, as they arrive at the age of 16; then the said lands will be his right and property, to him and his heirs forever." Susan, one of the four children, died before the age of 16. *Held*, that the $50 so charged upon the land in favor of Susan, and that in gavor of Ann, who died in the lifetimeof the testator, were sunk, and the land was to be held free of the charge. *Ibid.*

46. A testator devised as follows: "It is my will and desire that my whole estate, both real and personal, except, etc., remain together as joint stock of my beloved wife and children, and my farm continued under the management of my executor, for their support and education, and that each one, if a son, receive his distributive share when he arrives at the age of 21 years, and if a daughter, when she arrives at the same age or marries, always reserving my house lot as a residence for my infant children and my beloved wife during her natural life or widowhood." *Held*, that the widow was entitled to an equal portion of the estate with the children. *Armstrong v. Baker*, 553.

DISSEIZIN.

A freeholder cannot now be disseized of his seizin but by a dispossession *aided by the act of law* which takes away his right of entry. Therefore, a disseizin, in this State, can only be a dispossession, and a continued adverse possession for seven years under color of title. *Tyson v. Harrington*, 429.

DONATIO MORTIS CAUSA.

When a party avers that a certain bond was given to him in South Carolina, as a *donatio mortis causa*, he must show that his right accrues under some special law of South Carolina; otherwise the gift comes within the provision of the common or canon law, and there must be an express or implied delivery, and the title to be dependent upon the death of the donor. *McCraw v. Edwards*, 202.

ENTRIES AND GRANTS.

1. When one makes an entry so vague as not to identify the land, such entry does not amount to notice, and does not give any priority of right

ENTRIES AND GRANTS—*Continued.*

as against another individual who makes an entry, has it surveyed, and takes out a grant. *Munroe v. McCormick*, 85.

2. One who makes an entry and has it surveyed cannot afterwards shift its location to the detriment of a subsequent enterer. *Ibid.*

3. A payment of money into the public treasury for an entry of land, without the certificate required from the Secretary of State by the act, Rev. Stat., ch. 42, sec. 22, is to be regarded as a merely voluntary and unauthorized act, and not as a payment on the entry, so as to entitle the party to a grant. *Buchanan v. Fitzgerald*, 121.

4. The proviso in the act of 1842, ch. 35, saving the rights of junior entries for which the purchase money may have been paid, is to be construed as not preferring a lapsed entry before a junior entry subsisting at the passing of the act, on which the purchase money was afterwards duly paid and a grant obtained in due time. *Ibid.*

5. A. made an entry so vague in its description that no one could tell what land it covered. Afterwards B. made an entry definite in its description. A., having full notice of this entry, causes a survey to be made of his entry by which he includes the land entered by B., but to do so he is obliged to run 2 miles in length and but a few yards in width, and passing over several other tracts of granted lands, and upon such survey obtains a grant before B. obtains his. *Held*, that under these circumstances A. is to be looked upon in the same light as a junior enterer, with notice of a prior entry of B., and that B.'s title is preferable, and he has a right to a decree compelling A. to make him a conveyance and for profits, etc. *Allen v. Gilbreath*, 252.

6. Before B. discovered that the land he entered, including a rock quarry, was vacant, he agreed to purchase part of a tract of land which A. claimed from C. and which was supposed to include the rock quarry, but in the agreement the rock quarry was reserved to A. *Held*, that this formed no reason in equity why B. should not enter the rock quarry, when he knew it to be vacant. *Ibid.*

7. There is now no statute prescribing the time within which grants must be issued, where the entry money has been paid. *Krous v. Long*, 250.

8. A person, therefore, who pays the entry money may take out his grant when he chooses, subject to the risk that if another person enters the same land without notice of the prior entry, and first obtains his grant, this shall be preferred. *Ibid.*

EVIDENCE.

1. Examining a party in a suit in equity as a witness is an equitable release to him as to the matter to which he is examined. *Burton v. Stamper*, 14.

2. If the party examined be one primarily liable, and the other defendant only secondarily, the plaintiff gives up his claim against both by the examination of the former. *Ibid.*

3. A deed, absolute on its face, may be shown to have been intended merely as a security, though not by parol evidence, by itself, that it was meant by the parties to be a mortgage; but it must be clear and cogent evi-

EVIDENCE—*Continued.*

dence, as by proof *dehors* of facts and circumstances which, to the apprehension of men versed in business and judicial minds, are incompatible with the idea of a purchase and leave no fair doubt that a security only was intended. *Blackwell v. Overby*, 38.

4. Thus where A. made a conveyance to B. and C., absolute on its face, for his interest in a gold mine, for the consideration of $40, when it was shown to be worth $400; when A., at the time, was in great distress for money; when the alleged price was not paid at the preparation or execution of the deed, nor any security given for it; when upon the interest being afterwards sold by B. and C. for $400, they retained $40 and paid A. $60 more out of the amount received on the sale; when A. asserted, in the presence of B. and C., that he had made he conveyance in trust, and they did not deny it; when A., after the conveyance, continued in possession of the mine, taking the profits as he had done before: *Held*, that upon these circumstances the conveyance must be deemed and taken by the court as intended for a security only, and that A. is entitled to the same relief as if it had so appeared on the face of the instrument. *Ibid.*

EXECUTIONS.

1. Where a tract of land is bought for a wife, and the price paid partly out of the proceeds of her own real estate, to the sale of which she assented only on condition that the proceeds of the sale should be so invested, and part of the price was paid by her husband: *Held*, that so far as the proceeds of her estate went to the payment of the price, she was a *cestui que trust*, and as to the residue, her husband; and that this, being a mixed trust, was not subject to execution. *Williams v. Williams*, 20.

2. A. made a contract for the purchase of a tract of land, gave his bond for the purchase money, on which he made some payments, and took a bond for the conveyance of the title whenever the infant to whom it belonged became of age; and a judgment having been recovered against A. for the balance of the purchase money, execution was levied on his interest in the land, and B. became the purchaser at the sale under this levy. *Held*, that B. acquired no title of any sort to the land, as there was no trust subject to execution, the trust being a mixed and not a pure trust. *Melton v. Davidson*, 194.

FRAUD AND FRAUDULENT CONVEYANCES.

1. Though fraud, circumvention, or undue influence will avoid the execution of a deed, yet, *fair* argument and persuasion may be used with out having that consequence. *Taylor v. Taylor*, 26.

2. A court of equity will compel the discovery of a secret trust to enforce it if lawful, or declare it void if unlawful, whenever the fact of its not being declared in the conveyance creating the legal estate is caused by fraud or circumvention, or is the result of accident or mistake, or the omission is by design, the trust being unlawful and the object of secrecy being to evade the policy of the law; the court in all these cases proceeding upon the idea of preventing fraud. *Brown v. Clegg*, 90.

3. Neither weakness of mind nor old age is of itself sufficient ground to invalidate an instrument. To have that effect, there must be some

FRAUD AND FRAUDULENT CONVEYANCES—*Continued.*

fraud in the transaction, either expressly proved or inferred from the circumstances. *Suttles v. Hay*, 124.

4. Although the secret employment of a by-bidder at an auction sale may be a fraud upon the vendee, yet the latter must aver in his bill and show that he abandoned the contract as soon as he discovered such fraud: *McDowell v. Simms*, 278.

5. Where a woman, just before marriage, secretly and with the intent to deceive her intended husband conveys away her property: *Held*, that the conveyance was void as to him, though the children to whom it was conveyed were themselves innocent. *Tisdale v. Bailey*, 358.

6. A purchaser for value from a fraudulent grantee, where there is actual fraud, gets a valid title, unless he has notice of an existing debt unpaid, or of a debt subsequently contracted before he makes the purchase. *Toole v. Darden*, 394.

7. Where a fraud has been practiced on an infant in order to procure from him a contract for the sale of his land, a court of equity will neither compel him to execute the contract nor will it require him to make compensation, if the infant has been guilty of no fraud himself. *Griffis v. Younger*, 520.

8. When a voluntary deed of her property is made by a woman, in contemplation of marriage, afterwards consummated, without the existence of the deed being made known to the intended husband, this is in law a fraud upon him. *Strong v. Menzies*, 544.

GIFTS.

1. Where a parent on the marriage of his daughter, delivers negroes to his son-in-law, his subsequent declarations, in the absence of the son-in-law, are not competent evidence. *Hicks v. Forrest*, 528.

2. Where negroes are delivered by a parent to a son-in-law at the time of his marriage, and the son-in-law afterwards, in the lifetime of the parent, sells the negroes, they are still to be considered as a gift by the parent, and the advancement is to be valued at the time of the delivery. *Ibid.*

GUARDIANS AND WARDS.

1. The act of Assembly, Rev. Stat., ch. 54, sec. 23, which authorizes guardians who have been appointed in another State to orphans who have removed to that State and have guardians here, to demand and receive of the latter the estate of the wards, does not apply to testamentary guardians appointed in this State. *Pugh v. Mordecai*, 61.

2. A guardian is not bound to have the money ready to pay the ward when he comes of age, but the ward is bound to take a bond in discharge of the guardian, which the latter properly took and has not made his own by fraud or *laches*. Such a bond in truth belongs to the ward just as much as a specific chattel. *Goodson v. Goodson*, 238.

HUSBAND AND WIFE.

1. In this State a wife has no right to have a provision made for her out of a distributive share accruing to her during her coverture. *Allen v. Allen*, 293.

HUSBAND AND WIFE—*Continued.*

2. And the husband is not at liberty to make a voluntary disposition of such distributive share, even in trust for his wife, so as to prevent it from being liable to the claims of his creditors. *Ibid.*

3. A husband has a right to assign for the payment of his debts a legacy due to his wife. *Barnes v. Pearson*, 482.

INFANTS.

When the land of an infant is sold by a decree of a court of equity for a particular purpose, any surplus of money that remains after that purpose is accomplished will be regarded a real estate, and, upon the death of the infant intestate, will go to his heirs at law and not to his next of kin. *March v. Berrier*, 524.

INJUNCTIONS.

1. In an injunction case, if upon the hearing of the answer the statements are such as to leave in the mind of the court a reasonable doubt whether the plaintiff's equity is sufficiently answered, the injunction will not be dissolved, but will be continued to the hearing. *Monroe v. McIntyre*, 65.

2. Where A. upon a good consideration gave to B. a power of attorney to prosecute a suit at law in the name of A., but for the benefit of B., B. indemnifying A. against all responsibility for the costs, a court of equity will enjoin A. from dismissing the suit. *Ibid.*

3. Where a vendee gave a bond for the purchase of a tract of land, and the vendor, at the same time, gave a bond to make a valid title when the money was paid: *Held*, that these were concurrent acts, and that if the vendor attempted to collect the money on the bond for the price of the land, without making or tendering a valid title, the vendee was entitled to an injunction, and if a valid conveyance of title was not filed in court after the bill of injunction granted, the injunction should be continued to the hearing. *Brittain v. McLain*, 165.

4. After there has been a judgment at law, at the instance of some tenants in common, for an actual partition of land, the other tenants or any of them may have an injunction against the judgment, upon the allegation that the land cannot be actually divided without injury to the owners, and the injunction will be continued until the hearing, that the court may decide, *upon the proofs*, whether an actual partition or a sale of the premises will be most for the interest of the parties. *Gash v. Ledbetter*, 183.

5. An officer who merely proceeds to collect an execution put into his hands as an officer ought not to be made a party to a bill of injunction, and, if he is so, the bill will be dismissed as to him, with costs. *Lackay v. Curtis*, 199.

6. In injunction cases, where the answer does not confess the equity set up in the bill and is not evasive, but contains a fair response to all the allegations, the injunction will be dissolved as a matter of course. *Green v. Phillips*, 223.

7. When in an injunction bill the answer admits the equity charged in the bill, but brings forward a new fact in avoidance of it, the injunction must be continued until the final hearing. *Strong v. Menzies*, 544.

JUDGMENT, EX PARTE.

An *ex parte* judgment against a person, not a citizen or inhabitant of the country, has no extra-territorial obligation, and ought not to be respected by the courts of other countries further than it may be made to appear to be right. *Battle v. Jones*, 567.

JURISDICTION.

1. It is an established rule of courts of equity to grant relief in cases of a mistake in matters of fact, when the mistaken fact constitutes a material ingredient in the contract of the parties. But to authorize this interference the mistake must be made out entirely satisfactory. *Stamper v. Hawkins*, 7.

2. Where upon a contract for the sale of land by the acre it was agreed that it should be referred to a particular surveyor to ascertain the number of acres, and the surveyor made the survey, but it was impossible to make a plat from his field notes, so as to ascertain the number of acres: *Held*, that, on the ground of this mistake of the surveyor, either party was entitled to demand a resurvey. *Ibid.*

3. Where there has been a judgment at law a court of equity, except in a case of fraud, will not interfere in behalf of either party upon the ground of testimony being discovered since the trial which was unknown to the party at the time of the trial and which would have materially varied the result. *Powell v. Watson*, 94.

4. Where a suit abated by the death of the defendant and an execution issued against the plaintiff for all the costs, at the instance of the heirs of the deceased, the execution was void, and a note given by the plaintiff for the purpose of discharging it, being without consideration, the plaintiff has a right in equity to be relieved against it. *Lackay v. Curtis*, 199.

5. A note, being passed without indorsement, and therefore there being no legal title in the person to whom it was transferred, he is subject to the same equity as the payee, without regard to the question of notice. *Ibid.*

6. Where a recovery in ejectment has been effected by a consideration between the purchaser at a sheriff's sale and trustees, who have the legal title, by which the latter are induced to commit a breach of trust: *Held*, that the *cestuis que trustent* are entitled to an injunction to be continued to the hearing to prevent the plaintiff in ejectment from taking possession of the land. *Irwin v. Harris*, 215.

7. A court of equity will under no circumstances permit a trustee to secure a debt of his own, not secured by the trust, by forming a combination with one claiming adversity to those whom interest he has undertaken to protect. *Ibid.*

8. It is the policy of the law to favor purchasers at sheriffs' sales as against debtors in the executions whose debts have been paid by the purchasers, but not against third persons. *Ibid.*

9. A court of equity never interferes in behalf of a mere legal demand until the creditor has tried the legal remedies and found them ineffectual. *Wheeler v. Taylor*, 225.

10. A bill in equity for the conveyance of a tract of land for which the plaintiff alleged the defendant had by fraud obtained from him a deed

JURISDICTION—*Continued.*

of trust, may be brought either in the county in which the land lies or in that in which either of the parties resides. *Troutman v. Troutman*, 232.

11. Where a party has had a trial at law on a case exclusively within the jurisdiction of a court of law, a court of equity will not interfere with the judgment except for some new matter, not known to the party while the court of law had the case in its power, and then not for matter to repel the charge by opposing proofs, but such as destroy his adversary's proof. *Houston v. Smith*, 264.

12. Where A., in right of his wife, was entitled to a distributive share of a personal estate, and in consideration of an assignment thereof procured a conveyance to be made to his wife of certain lands by B., and the deed was never registered; and afterwards A. persuaded his wife to let this deed be surrendered, and procured a conveyance of the same land to be made to himself, and then sold the land to C., who was a *bona fide* purchaser for a valuable consideration and without notice: *Held*, that the heirs of the wife after her death had no equitable claim for this land against C. *Cramp v. Black*, 321.

13. Where both parties are equally entitled to consideration, equity does not aid either, but leaves the matter to depend upon the legal title. *Ibid.*

14. Where a *bona fide* purchaser for a valuable consideration, without notice, has acquired the legal title, a court of equity will not interfere to deprive him of his legal advantage. *Ibid.*

15. The cases in which the court of equity will interfere to set up an incomplete legal title are those against volunteers. *Ibid.*

16. Where a plaintiff alleges an important equity, he is at liberty to add a small item, not by itself within the jurisdiction of the court, when it is connected with and tends to elucidate the main subject. *Hart v. Roper*, 349.

17. Where there has been a suit between parties, an account taken and a decree thereon, neither party, while the decree remains in force, can bring a new suit for the purpose of recovering items which it is alleged were omitted in the former account. *Horner v. Dunnegan*, 371.

18. Although a court of equity assumes jurisdiction upon the grounds of the oath of the party and the indemnity decreed, yet where the bond has been distroyed or suppressed by the obligee, no relief will be given. *Davis v. Davis*, 418.

19. An award for the payment of money merely can only be enforced at law; equity has no jurisdiction over it. *Cannady v. Robards*, 422.

20. Though equity will not compel a purchaser to accept a doubtful title, yet the doubt must be a reasonable one. *Tomlinson v. Savage*, 430.

21. In a bill to rescind a contract for land purchased at auction, upon the ground that the vendor employed "puffers," the time when the vendee discovered this fact must be set forth. *Ibid.*

22. A. purchased a tract of land from B. and afterwards, supposing that B. had not a good title, procured a conveyance from C., the original owner, under whom B. claimed: *Held*, that if B.'s title was but an equitable

JURISDICTION—*Continued.*

one, when A. was induced to believe that it was a legal one, upon B.'s refusal to procure and convey the legal title, A. had a right to have the contract rescinded. But, as he chose to purchase the legal title himself, he cannot claim more from B. than to be reimbursed what it cost him to get the legal title. *Kindley v. Gray*, 445.

23. When an instrument is intended to carry an agreement into execution, but by reason of a mistake, either of fact or of law, does not fulfill that intention by passing the estate or the thing bargained, for equity corrects the mistake by decreeing a proper instrument to be executed. *McKay v. Simpson*, 452.

24. In a suit in equity to recover the amount of a lost note, an affidavit of the loss, annexed to the bill, is sufficient to give jurisdiction to the court, and at the hearing, to let in proof of the contents of the note, unless there be some opposing testimony. *Fisher v. Carroll*, 485.

25. The case would be different if the execution or contents of the note were denied; and that was, on the oath of the defendant, suggested as the plaintiff's motive for falsely alleging its loss. In such a case, although equity would not refuse to consider the mere affidavit as sufficient to account for not producing the original note, the strictest and clearest proof would be required of the execution and contents. *Ibid.*

LETTERS OF CREDIT.

A. gave to B. a letter to C., a merchant, in the following words: "My friend B. goes to your city for goods on a short credit. I am satisfied you will be safe in selling him any amount he may see proper to purchase. From my long acquaintance with him, I do not hesitate to say that he is as punctual a man as I know." *Held*, that this was not a letter of credit, but a representation merely of A.'s opinion of B.'s solvency and punctuality, and, if not given *mala fide*, subjects A. to no responsibility. *Hardy v. Pool*, 28.

LIMITATION AND LAPSE OF TIME.

Where a negro slave was sold by an order of court, upon the application of the administrator, who was also the guardian of the infant distributees, for a division among them, and the slave was purchased by the guardian, and afterwards a settlement was made between the guardian and the husbands of the infant distributees, with a full knowledge of the circumstances, and the guardian charged with the amount of the price he had bid for the negro, and sixteen years had elapsed after the sale of the negro: *Held*, that neither the distributees nor any that represent them had any right to set aside the sale. *Hawkins v. Simmons*, 16.

LUNATICS.

1. When the land of a lunatic is sold on petition of the guardian, the proceeds are under the direction of the court, and no creditor can claim a priority. *Latham, ex parte*, 406.

2. When the lunatic dies, or his disability is removed, then the property remaining, or its proceeds, is to be delivered over to the lunatic himself in the latter case or to his representatives in the former case, and of course, will then be subject to the claims of the creditors as in other cases of individual debtors. *Ibid.*

MORTGAGES.

1. In order to rebut the presumption, under the statute, of the abandonment of the right of redemption in a mortgage, upon the ground of great mental distress and decay of memory, if these can have such an effect, they must be established beyond all doubt; for the statute is one of repose and its provisions ought to be fairly carried out. *Ingram v. Smith*, 97.

2. In the case of bills for redemption of mortgages it is now the usual course of the court not to require the mortgagor to pay the debts and costs by a given day or that his bill shall stand dismissed, but, in default of payment, to order a sale of the subject, and out of the proceeds discharge the encumbrance, and then the surplus belongs to the mortgagor. *Ibid.*

3. Where a deed is absolute on its face it cannot be converted into a mortgage or security for a debt merely by evidence of the declaration of the parties or the unaided memory of the witnesses. There must be proof of facts and circumstances *dehors* the deed, incompatible with the the idea of an absolute purchase and leaving no doubt on the mind. There must be an allegation that the clause of redemption was omitted by reason of ignorance, mistake, fraud, or undue advantage. *Kelly v. Bryan*, 283.

PARTIES.

1. In a bill to redeem a mortgage the personal representative of the mortgagee is a necessary party. *Guthrie v. Sorrell*, 13.

2. When creditors who claim under a deed of trust for the payment of debts are in a posterior class, they need not make as parties to their bill those who have the prior encumbrances, but they must make as parties all who are in their own class. *Patton v. Bencini*, 204.

3. The husband is a necessary party to a bill by a wife to recover slaves alleged by her to have been conveyed to a trustee for her separate use. *Wilson v. Wilson*, 236.

PARTITION.

Where dower has been assigned to a widow by giving her one-third of the net profits of an estate, this is no impediment to a partition or sale for partition by the heirs. *Hassell v. Mizell*, 392.

PLEADING AND PRACTICE.

1. Where a bill is filed to compel a party to deliver up an instrument in his possession, upon the ground that it is a forged instrument, the plaintiff has a right to have it produced and left in court for inspection, and for better examination of witnesses—the bill in this case, alleging the forgery, having been sworn to. *Scarborough v. Tunnell*, 103.

2. It is a rule in equity that relief must be granted according to the allegations of the bill and the proofs. The latter must not only show that the plaintiff is entitled to some relief, but that he is entitled to it upon the grounds on which he has placed his claim. *Craige v. Craige*, 191.

3. In this case a motion was made to remand the cause because it had been set for hearing and ordered to be transferred to the Supreme Court at a special term of the court below. *Held*, that the order of the court

PLEADING AND PRACTICE—*Continued.*

below was right, and the motion to remand on the ground that the court below had no right to make such order was refused. *Royster v. Chandler*, 291.

4. When a case is made out between defendants by evidence arising from the pleadings and proofs between the plaintiff and the defendants, one defendant may insist that he shall not be obliged to institute another suit against his codefendant for a matter that may then be adjusted between them. *Tyson v. Harrington*, 329.

5. On a motion to dissolve an injunction, there may be an order for its dissolution or for its continuance to the hearing; but the bill cannot be dismissed before the hearing. *Allen v. Smitherman*, 341.

6. The maxim "*ignorantia legis neminem excusat*" is founded upon the presumption that every one, competent to act for himself, knows the law; but the presumption that he knows it is not conclusive, but may be rebutted. *Hart v. Roper*, 349.

7. Therefore, when a plaintiff alleges in his bill that he is ignorant of the law, and the defendant demurs, it seems that the latter cannot take advantage of the maxim. *Ibid.*

8. Where a cause is removed to this Court upon bill and demurrer, on overruling the demurrer the cause will be remanded to the court from which it came, for further proceedings. *Ibid.*

9. Where a bill was filed against two, one of whom put in an answer, to which there was a replication, and the other filed a demurrer, the cause, while in that state, cannot be removed to this Court under the act of 1848, ch. 30. *Ray v. Ray*, 355.

See Bill and Answer.

SPECIFIC PERFORMANCE.

1. Where a party covenants to convey a title to a tract of land, he cannot resist a claim by the vendee for specific performance by showing that a part of the title is in others; that he has in vain endeavored to procure a conveyance from them, and that therefore he is unable to complete the title, and especially where he was cognizant of his want of title. *Love v. Camp*, 209.

2. What might be the effect of a knowledge on the part of the convenantee, at the time the contract was made, that the covenantor had not the title, whether a court of equity would in such a case decree a specific performance or leave the party to his action at law for damages, *quere*. *Ibid.*

SURETIES.

1. There was a judgment against the principal and two sureties, and an execution levied on the property of one of the sureties. A. brought this property from this surety, pending the levy, and afterwards obtained an assignment of the judgment to enable him to have the whole amount satisfied out of the property of the cosurety, and issued an execution for that purpose. *Held*, that a court of equity will restrain him from collecting out of the cosurety more than the fair proportion which the latter owed, whether A. had actual notice of the execution or not. *Dobson v. Prather*, 31.

SURETIES—*Continued.*

2. A surety to a guardian bond is not discharged from his liability by the guardian's giving a new bond with other sureties. *Jones v. Blanton*, 115.

3. A surety who has been compelled to pay the debt of his principal must make all his cosureties parties to a bill for contribution, if they are in this State and solvent. But where one is out of the jurisdiction of the court, and others are within it, the plaintiff, by stating the fact in his bill, is at liberty to proceed against the latter alone. *Ibid.*

4. The cosurety who is in this State will have to make contribution, without regard to the share of contribution which the absent cosurety would have had to pay had he been within the reach of our courts. *Ibid.*

5. A surety to a guardian bond, when sued by wards, is not bound to avail himself of the statute of limitations. *Ibid.*

6. All the bonds given by a guardian are but securities for the same thing and the sureties on each are bound to contribution, but their liabilities are in proportion to the amount of their respective bonds. *Ibid.*

7. It is a principle in equity that when land is sold by a clerk or master under a decree of a court of equity, and the legal title is retained until the purchase money is paid, if the principal becomes insolvent before so doing, the sureties have an immediate equity, either before paying the money or after, to subject the land. *Egerton v. Alley*, 188.

TENANT FOR LIFE AND REMAINDERMAN.

1. Where there is a tenant for life of slaves and a remainderman, it is no injury by the tenant for life to the remainderman simply to remove the slaves to another State, or thus to remove them and sell nothing more than his own interest in them, unless he does it fraudulently for the purpose of injuring the remainderman by such sale, and an injury actually results. *Lee v. McBride*, 533.

2. Where there is a tenant for life of slaves and a remainderman, and the tenant for life sells the slaves to a third person, who threatens to convey them out of the State, the remainderman is entitled to his writ of injunction, etc. *Brown v. Wilson*, 558.

TENANTS IN COMMON.

Where one tenant in common has long been in the reception of the profits of the estate held in common, he is bound to account with his cotenant for all his share of the profits received, no matter at what time received, unless there is evidence of an ouster, or unless such cotenant makes a demand and there is a refusal. In these latter cases the statute of limitations begins to run from the time of such ouster or such demand and refusal. *Northcott v. Casper*, 303.

TRUSTS AND TRUSTEES.

1. Where slaves are conveyed by a deed, absolute on its face, but with a secret confidence that the donees should hold them in a qualified state of bondage, that is, that the donees were to consult the benefit of the negroes and not their own emolument, this trust is illegal, and there is a resulting trust to the donor. *Lemmond v. Peoples*, 137.

TRUSTS AND TRUSTEES—*Continued.*

2. A trustee is entitled to commissions as compensation for his labor in managing the trust committed to him, though no provision be made for it in the deed of trust. *Sherrill v. Shuford*, 228.

3. A want of good faith or of proper diligence will subject a trustee to the loss which may be consequent upon it. *Freeman v. Cook*, 373.

4. A marriage settlement stipulated that the property should remain in the hands of the husband; but if, in the opinion of the trustees, it should become necessary for any purpose to take the property out of the hands of the husband, the trustees should be at liberty to do so, without the interruption of the husband. *Held*, that when the trustees found that the husband was wasting and disposing of the property, it was their duty to resume the possession, if it could be done by proper diligence, and if they failed to use such diligence they were responsible for any loss that might occur. *Ibid.*

5. The advice of counsel will not protect a trustee from the consequences of a failure to discharge his duty properly. If he has doubts he should apply to a court of equity, which will always give him directions upon which he may rely with entire confidence. *Ibid.*

6. When trust property has been improperly disposed of, and is capable of being followed in specie, the party in possession, with notice, may be compelled to restore it. If it cannot be followed or the person in possession cannot be made liable to the trust, the trustee will be decreed to compensate the *cestui que trust* by payment of the value of the property so lost, and also to account for all rents, hires, interest, and other profits which have been made from the property so lost. *Ibid.*

7. When a deed of trust has been executed, conveying property in trust for the payment of debts, and the trustee has accepted the same, the grantor, afterwards, has no right to vary the trusts, and any of the creditors secured may compel the trustees to execute the trusts as declared, although they were not privy to the execution of the deed. *Ingram v. Kirkpatrick*, 463.

8. Where a conveyance has been made by a father to one of his sons of land and negroes to be managed under the direction of that son, in trust that he will apply the proceeds of such property to the support of the father and family during the father's lifetime, and after his death to sell the property and divide the proceeds thereof among his heirs and distributees: *Held*, that the son was entitled to a reasonable compensation for his care and trouble in the management of the estate. *Raiford v. Raiford*, 490.

9. Where in such a deed a negro was mentioned which had been previously conveyed by the father to his son, reserving his life estate, and it was shown that this fact was disclosed to the gentleman who drew the deed, and the son was informed by the draftsman that it was necessary to insert the name of the negro, as the father had a life estate, but this would not affect the son's title: *Held*, that the son was not precluded by his acceptance of the deed from asserting his right to the negro. *Ibid.*

10. *Held further*, that as by the deed of trust the proceeds of the personal property, after the death of the father, were to be divided among all

TRUSTS AND TRUSTEES—*Continued.*

his distributees in the same manner as if he had died intestate, according to the statute of distributions, the gift of the remainder in this negro to the son must be accounted for an an advancement to him in the division of such proceeds; and *Held* further, that the value of this advancement must be estimated at the time it was made, that is, the value at the time of the remainder. *Ibid.*

11. Where at an execution sale a person said that if he could buy a negro at a small price he would convey him to the son of him against whom the execution was, and the negro was accordingly bought by him at one-third of his value: *Held*, that this was only a parol promise, which did not bind the party making it, and that he could not be held to be a trustee for the son. *Reed v. Cox*, 511.

12. A. being separated from her husband, it was agreed between B., the brother of A., and the husband that in consideration of $200 and other considerations from B. to the husband, the husband should deliver three negroes to B. for the sole and separate use of A., and the negroes were accordingly so delivered. Afterwards A. became reconciled to her husband. *Held*, that B. held these slaves as trustee for the sole and separate use of A., and must account for them as such, with the right, however, to be reimbursed such sums as he had advanced for A. *Huntly v. Huntly*, 514.

VENDOR AND VENDEE.

1. A. purchased the land of B. at a sale under an execution he had against B., and at the sale declared he was buying in the land only as a security for other debts which were to be ascertained on a settlement with B., and thereby prevented B.'s friends from advancing the money to satisfy the execution. Afterwards the land was sold as the property of A. under execution against him. *Vannoy v. Martin*, 169.

2. *Held*, first, that the act making void parol contracts for the sale of land (Rev. Stat., ch. 50, sec. 8) did not bar B. from his remedy. *Ibid.*

3. *Held*, secondly, that the purchasers under the execution against A. held but the title he had, subject to all the equities against it, whether they had notice of such equities or not. *Ibid.*

4. A purchaser of the land cannot be compelled to pay the purchase money before he has obtained a title. *Cox v. Jerman*, 526.

VOLUNTARY SECURITIES.

1. Though a voluntary bond is good between the parties, in this Court as well as at law, yet in the course of administration it is to be postponed to any just debts, though due by simple contract. *Stephens v. Harris*, 57.

2. Equity regards it as a fraud to give a voluntary security which, by its form, gets a preference to a just debt, and, therefore, interposes to prevent the preference, in whatever way it may become necessary to effect that end. So that, if the voluntary obligee receive the money from the executor, the real creditor may file his bill to be satisfied out of the money, if he cannot otherwise get his debt; and if the creditor has the fund in his possession, he may retain it in satisfaction. *Ibid.*

USURY.

A party cannot avail himself of the plea of usury in notes on which judgments have been rendered, unless the judgments were rendered upon an usurious understanding. *Fisher v. Carroll*, 485.

WIDOWS.

1. Before the act of 1848, ch. 101, a widow could not dissent from her husband's will by attorney, although she was too unwell or infirm to travel to court so as to dissent in person. *Bell v. Wilson*, 1.

2. The widow of a man to whom a deed for land had been delivered, but from whom it had been abstracted before its registration, has a right to her dower in such land, the husband having an incomplete *legal title;* but to recover her dower she must apply to a court of equity. *Tyson v. Harrington*, 329.

WILLS.

Adding a codicil to a will is a republication, and the codicil brings the will to it and makes it a will from the date of the codicil. *Murray v. Oliver*, 55.